

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case Number CC 2011-21

13 **DAVID CAMERON BROSNAN**
2171 Junipero Serra Boulevard, Suite 100
Daly City, California 94014

A C C U S A T I O N

14 **Optometry License Number 11410**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Complainant Mona Maggio brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry (Board), Department of Consumer Affairs.

21 2. On or about July 13, 2000, the Board issued Optometry License Number 11410 to
22 respondent David Cameron Brosnan. This optometry license was in full force and effect at all
23 times relevant to the charges brought in this Accusation and will expire on February 28, 2014,
24 unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 4. Section 118, subdivision (b), provides:

1 "The suspension, expiration, or forfeiture by operation of law of a license issued by a board
2 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
3 of a court of law, or its surrender without the written consent of the board, shall not, during any
4 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
5 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
6 provided by law or to enter an order suspending or revoking the license or otherwise taking
7 disciplinary action against the licensee on any such ground."

8 5. Section 3090 provides:

9 "Except as otherwise provided by law, the board may take action against all persons guilty
10 of violating this chapter or any of the regulations adopted by the board. The board shall enforce
11 and administer this article as to licenseholders, and the board shall have all the powers granted in
12 this chapter for these purposes, including, but not limited to, investigating complaints from the
13 public, other licensees, health care facilities, other licensing agencies, or any other source
14 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
15 adopted by the board."

16 STATUTORY PROVISIONS

17 6. Section 136 provides:

18 "(a) Each person holding a license, certificate, registration, permit, or other authority to
19 engage in a profession or occupation issued by a board within the department shall notify the
20 issuing board at its principal office of any change in his or her mailing address within 30 days
21 after the change, unless the board has specified by regulations a shorter time period.

22 "(b) Except as otherwise provided by law, failure of a licentiate to comply with the
23 requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative
24 fine, if the board has the authority to issue citations and administrative fines."

25 7. Section 3007 provides:

26 "An optometrist shall retain a patient's records for a minimum of seven years from the date
27 he or she completes treatment of the patient. If the patient is a minor, the patient's records shall

28 ///

1 be retained for a minimum of seven years from the date he or she completes treatment of the
2 patient and at least until the patient reaches 19 years of age.”

3 8. Section 3070, subdivision (a), provides:

4 “(a) Before engaging in the practice of optometry, each licensed optometrist shall notify the
5 board in writing of the address or addresses where he or she is to engage, or intends to engage, in
6 the practice of optometry and, also, of any changes in his or her place of practice. The practice of
7 optometry is the performing or the controlling of any of the acts set forth in Section 3041.”

8 9. Section 3098 provides:

9 “When the holder uses the title of ‘Doctor’ or ‘Dr.’ as a prefix to his name, without using
10 the word ‘optometrist’ as a suffix to his name or in connection with it, or, without holding a
11 diploma from an accredited school of optometry, the letters ‘Opt. D.’ or ‘O.D.’ as a suffix to his
12 name, it constitutes a cause to revoke or suspend his certificate of registration.”

13 10. Section 3110 provides, in pertinent part:

14 “The board may take action against any licensee who is charged with unprofessional
15 conduct, and may deny an application for a license if the applicant has committed unprofessional
16 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
17 limited to, the following:

18 “(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the
19 violation of, or conspiring to violate any provision of this chapter or any of the rules and
20 regulations adopted by the board pursuant to this chapter.

21 “(b) Gross negligence.

22 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
23 omissions.

24 ...

25 “(q) The failure to maintain adequate and accurate records relating to the provision of
26 services to his or her patients.

27 ...

28 ///

1 “(x) Failure or refusal to comply with a request for the clinical records of a patient, that is
2 accompanied by that patient’s written authorization for release of records to the board, within 15
3 days of receiving the request and authorization, unless the licensee is unable to provide the
4 documents within this time period for good cause.”

5 11. Health and Safety Code section 123110 provides, in pertinent part:

6 “(a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as
7 provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor
8 patient authorized by law to consent to medical treatment, and any patient representative shall be
9 entitled to inspect patient records upon presenting to the health care provider a written request for
10 those records and upon payment of reasonable clerical costs incurred in locating and making the
11 records available. However, a patient who is a minor shall be entitled to inspect patient records
12 pertaining only to health care of a type for which the minor is lawfully authorized to consent. A
13 health care provider shall permit this inspection during business hours within five working days
14 after receipt of the written request. The inspection shall be conducted by the patient or patient's
15 representative requesting the inspection, who may be accompanied by one other person of his or
16 her choosing.

17 “(b) Additionally, any patient or patient's representative shall be entitled to copies of all or
18 any portion of the patient records that he or she has a right to inspect, upon presenting a written
19 request to the health care provider specifying the records to be copied, together with a fee to
20 defray the cost of copying, that shall not exceed twenty-five cents (\$0.25) per page or fifty cents
21 (\$0.50) per page for records that are copied from microfilm and any additional reasonable clerical
22 costs incurred in making the records available. The health care provider shall ensure that the
23 copies are transmitted within 15 days after receiving the written request.

24 ...

25 “(i) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision
26 (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any
27 health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section
28 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not

1 more than one hundred dollars (\$100). The state agency, board, or commission that issued the
2 health care provider's professional or institutional license shall consider a violation as grounds for
3 disciplinary action with respect to the licensure, including suspension or revocation of the license
4 or certificate."

5 12. California Code of Regulations, title 16, section 1510, provides:

6 "Inefficiency in the profession is indicated by the failure to use, or the lack of proficiency in
7 the use of the ophthalmoscope, the retinoscope, the ophthalmometer (or keratometer), tonometer,
8 biomicroscope, any one of the modern refracting instruments such as the phoropter, refractor,
9 etc., or the phorometer-trial frame containing phoria and duction measuring elements or a
10 multicelled trial frame, trial lenses, and prisms, in the conduct of an ocular examination; the
11 failure to make and keep an accurate record of findings; lack of familiarity with, or neglect to use,
12 a tangent screen or perimeter or campimeter; and the failure to make a careful record of the
13 findings when the need of the information these instruments afford is definitely indicated."

14 13. California Code of Regulations, title 16, section 1517, provides:

15 "For the purpose of denial, suspension, or revocation of the certificate of registration of an
16 optometrist pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act
17 shall be considered to be substantially related to the qualifications, functions, and duties of an
18 optometrist if to a substantial degree it evidences present or potential unfitness of an optometrist
19 to perform the functions authorized by his/her certificate of registration in a manner consistent
20 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to,
21 those involving the following:

22 "(a) Any violation of the provisions of Article 2, Chapter 1, Division 2 of the Code
23 (Sections 525 et seq. of the Code).

24 "(b) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the Code
25 (Sections 650 et. seq. of the Code) except Sections 651.4 and 654.

26 "(c) Any violation of the provisions of Chapter 5.4, Division 2 of the Code (Sections 2540
27 et seq. of the Code).

28 ///

1 “(d) Any violation of the provisions of Chapter 7, Division 2 of the Code (Sections 3000 et
2 seq. of the Code).”

3 **COST RECOVERY**

4 14. Section 125.3, subdivision (a), provides:

5 “(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
6 proceeding before any board within the department or before the Osteopathic Medical Board,
7 upon request of the entity bringing the proceeding, the administrative law judge may direct a
8 licensee found to have committed a violation or violations of the licensing act to pay a sum not
9 to exceed the reasonable costs of the investigation and enforcement of the case.”

10 **FACTUAL BACKGROUND**

11 15. In or about June of 2011, after falling behind on his rent, respondent walked away
12 from his optometry business “Eye Definition” at Serramonte Center in Daly City, California.
13 Respondent’s staff moved out of the store, but left behind thousands of patient files. Respondent
14 did not notify his patients or the Board that he was closing the business, nor did he leave any
15 contact information with Serramonte Center. His staff posted a sign on the front door of the store
16 which read: “THE OFFICE IS CLOSED. FOR QUESTIONS, PLEASE EMAIL US
17 @eyedef@comcast.net. WE APOLOGIZE FOR THE INCONVENIENCE.”

18 16. Serramonte Center began receiving telephone calls from respondent’s patients
19 trying to locate respondent, or get copies of their records or pending eyeglass and contact lens
20 orders. After getting dozens of calls, Serramonte Center finally referred all callers to the Board.

21 17. Examples of people affected by respondent’s failure to contact patients or return
22 messages are as follows:

23 **A. Patient R.G.¹**

24 1) Patient R.G. wanted copies of her and her mother’s optometry records. She was
25 unsuccessful in contacting respondent by telephone, email, or by calling the Serramonte Center.
26 Additionally, she had concerns about the personal and financial information in respondent’s files

27 _____
28 ¹ The patients’ names will be released pursuant to a discovery request.

1 because she has heard that some of his patients have had their credit cards compromised. On or
2 about July 11, 2011, R.G. filed a complaint with the Board against respondent.

3 **B. Patient M.B.**

4 1) Patient M.B. gave respondent three pairs of glasses and paid a deposit of over \$300 to
5 Eye Definition for respondent to insert new lenses in them. He did not receive the glasses with
6 the new lenses, nor did he receive a refund on his deposit. He was unsuccessful in contacting
7 respondent by email. On or about July 18, 2011, M.B. filed a complaint with the Board against
8 respondent.

9 **C. Rosanna Chen, O.D.**

10 1) Chen is an optometrist who had seen a number of respondent's former patients and
11 was seeking copies of their optometry records. She was unsuccessful in contacting respondent by
12 telephone, fax, email, or through his Facebook account. She worked with insurance companies
13 for authorizations to perform new exams for these patients. On or about July 25, 2011, Chen filed
14 a complaint with the Board against respondent.

15 **D. Patient B.L.**

16 1) Patient B.L. wanted copies of her, her husband's, and her son's optometry records.
17 She could not find contact information for respondent online. On or about September 5, 2011,
18 B.L. filed a complaint with the Board against respondent.

19 **E. Patient L.L.**

20 1) Patient L.L. wanted copies of her optometry records. She was unsuccessful in
21 contacting respondent by telephone and email. She contacted her insurance company to receive
22 approval for another eye exam with a different optometrist. On or about July 8, 2011, L.L. filed a
23 complaint with the Board against respondent.

24 **F. Patient S.R.**

25 1) Patient S.R. wanted copies of her optometry records. Although she was able to
26 contact respondent's office and was told that respondent would send contact information to her,
27 she has not received any further contact from respondent or his staff. On or about August 17,
28 2011, S.R. filed a complaint with the Board against respondent.

1 **G. Patient M.S.**

2 1) Patient M.S. wanted copies of her and her husband's optometry records. She was
3 unsuccessful in contacting respondent by telephone, email, or by calling the Serramonte Center.
4 On or about October 13, 2011, M.S. filed a complaint with the Board against respondent.

5 **H. Patient C.M.**

6 1) Patient C.M. wanted copies of her and her husband's optometry records. She was
7 unsuccessful in contacting respondent by email or by calling the Serramonte Center. She
8 contacted her insurance company to receive approval for another eye exam with a different
9 optometrist. On or about July 28, 2011, C.M. filed a complaint with the Board against
10 respondent.

11 **I. Patient S.M.**

12 1) Patient S.M. wanted copies of her optometry records, and knew of family and friends
13 who also needed copies of their optometry records. She was unsuccessful in contacting
14 respondent by calling the Serramonte Center. Additionally, she has had her credit card
15 compromised and knows of two other patients who have had unauthorized charges on their cards.

16 **J. Patient J.R.**

17 1) Patient J.R. wanted copies of his and his wife's optometry records. He was
18 unsuccessful in contacting respondent by calling the Serramonte Center.

19 **K. Patient R.F.**

20 1) Patient R.F. wanted copies of his and his wife's optometry records. He was
21 unsuccessful in contacting respondent by calling the Serramonte Center. R.F. called the Board to
22 file a complaint against respondent.

23 **L. Patient S.K.**

24 1) Patient S.K. wanted copies of her optometry records. She was unsuccessful in
25 contacting respondent by calling the Serramonte Center.

26 ///

1 M. Patient P.B.

2 1) Patient P.B. wanted copies of her optometry records. She was unable to contact
3 respondent. On or about November 17, 2011, P.B. filed a complaint with the Board against
4 respondent.

5 18. In or about October of 2011, respondent began performing eye exams at the office of
6 Paul Holland, M.D. Respondent's business card at Dr. Holland's office read: "Dr. David C.
7 Brosnan," without including "Optometrist," "Opt. D.," or "O.D." on the card.

8 19. A Board representative interviewed respondent on or about November 7, 2011.
9 Respondent stated that he could not pay the rent for Eye Definition and that he ultimately
10 declared personal bankruptcy. He had the mail for Eye Definition forwarded to his home address,
11 but was not aware that his staff posted the contact email "eyedef@comcast.net" on his office door
12 and did not have access to that email account. He could not afford to contact all of his patients or
13 maintain his telephone service. He eventually transferred patient records to his home. He began
14 informing former patients of the business closure around October of 2011.

15 20. On or about November 9, November 14, and November 22, 2011, the Board's
16 investigator sent to respondent authorizations and requests for patient records, including requests
17 for the entire files of R.G. and her mother, B.L and her husband and son, L.L., S.R., M.S. and her
18 husband, S.M and four family members, J.R. and his wife, and S.K and a family member. On or
19 about December 16, 2011, respondent's staff began to send copies of optometry records to most
20 of the patients. R.G. and her mother, S.R, and P.B. did not receive copies of their entire file.
21 Respondent could not locate the patient records for L.L. and a minor child of S.M. On or about
22 January 15, 2012, S.M. filed a complaint with the Board against respondent because of her child's
23 lost records.

24 **FIRST CAUSE FOR DISCIPLINE**
25 **Unprofessional Conduct: Failing to Notify the Board of Change of Mailing Address**
26 **(Bus. & Prof. Code, §§ 136, subd. (a), 3110, subd. (a))**

26 21. The allegations of paragraphs 15 and 18 are realleged and incorporated by reference
27 as if fully set forth.

28 ///

1 22. Respondent has subjected his license to disciplinary action under section 3110 for
2 unprofessional conduct, as defined by section 3110, subdivision (a), because he failed to notify
3 the Board of a change in his mailing address within 30 days in violation of section 136,
4 subdivision (a). As set forth in paragraphs 15 and 18 above, respondent failed to notify the Board
5 within 30 days that he abandoned his office at Serramonte Center or that he began working for the
6 office of Paul Holland, M.D.

7 **SECOND CAUSE FOR DISCIPLINE**
8 **Unprofessional Conduct: Failing to Retain Patient Records**
9 **(Bus. & Prof. Code, §§ 3007, 3110, subd. (a))**

10 23. The allegations of paragraph 20 are realleged and incorporated by reference as if fully
11 set forth.

12 24. Respondent has subjected his license to disciplinary action under section 3110 for
13 unprofessional conduct, as defined by section 3110, subdivision (a), because he failed to retain
14 patient records for seven years or until a minor reaches 19 years of age in violation of section
15 3007. As set forth in paragraph 20 above, respondent could not locate records for L.L. and a
16 minor child of M.S.

17 **THIRD CAUSE FOR DISCIPLINE**
18 **Unprofessional Conduct: Failing to Notify the Board of Change of Address**
19 **(Bus. & Prof. Code, §§ 3070, subd. (a), 3110, subd. (a))**

20 25. The allegations of paragraphs 15 and 18 are realleged and incorporated by reference
21 as if fully set forth.

22 26. Respondent has subjected his license to disciplinary action under section 3110 for
23 unprofessional conduct, as defined by section 3110, subdivision (a), because he failed to notify
24 the Board of a change in the address of his practice in violation of section 3070, subdivision (a).
25 As set forth in paragraphs 15 and 18 above, respondent failed to notify the Board that he
26 abandoned his office at Serramonte Center or that he began working for the office of Paul
27 Holland, M.D.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**
2 **Using the Title "Dr." Without "Optometrist," "Opt. D.," or "O.D." in Connection with Title**
3 **(Bus. & Prof. Code, § 3098)**

4 27. The allegations of paragraph 18 are realleged and incorporated by reference as if fully
5 set forth.

6 28. Respondent has subjected his license to disciplinary action under section 3098 for
7 using the title "Dr." without using it in connection with "Optometrist," "Opt. D.," or "O.D." As
8 set forth in paragraph 18 above, respondent's business card at the office of Paul Holland, M.D.,
9 read: "Dr. David C. Brosnan," without including "Optometrist," "Opt. D.," or "O.D." on the card.

10 **FIFTH CAUSE FOR DISCIPLINE**
11 **Unprofessional Conduct: Gross Negligence**
12 **(Bus. & Prof. Code, § 3110, subd. (b))**

13 29. The allegations of paragraphs 15-20 are realleged and incorporated by reference as if
14 fully set forth.

15 30. Respondent has subjected his license to disciplinary action under section 3110 for
16 unprofessional conduct, as defined by section 3110, subdivision (b). As set forth in paragraphs
17 15-20 above, respondent was grossly negligent by acts including, but not limited to, the
18 following: abandoning his practice; failing to inform patients that he closed his practice; failing to
19 provide patients with contact information; failing to establish a procedure for patients to request
20 records and prescriptions, or have them transferred to another practitioner; failing to advise
21 patients where their records were stored; failing to respond to patients; failing to maintain proper
22 patient records; losing patient files; and failing to provide patients their records and eyewear.

23 **SIXTH CAUSE FOR DISCIPLINE**
24 **Unprofessional Conduct: Repeated Negligent Acts**
25 **(Bus. & Prof. Code, § 3110, subd. (c))**

26 31. The allegations of paragraphs 15-20 are realleged and incorporated by reference as if
27 fully set forth.

28 32. Respondent has subjected his license to disciplinary action under section 3110 for
unprofessional conduct, as defined by section 3110, subdivision (c). As set forth in paragraphs
15-20 above, respondent was repeatedly negligent by acts including, but not limited to, the
following: abandoning his practice; failing to inform patients that he closed his practice; failing to

1 provide patients with contact information; failing to establish a procedure for patients to request
2 records and prescriptions, or have them transferred to another practitioner; failing to advise
3 patients where their records were stored; failing to respond to patients; failing to maintain proper
4 patient records; losing patient files; and failing to provide patients their records and eyeware.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **Unprofessional Conduct: Failing to Maintain Adequate and Accurate Records**
(Bus. & Prof. Code, § 3110, subd. (q))

7 33. The allegations of paragraph 20 are realleged and incorporated by reference as if fully
8 set forth.

9 34. Respondent has subjected his license to disciplinary action under section 3110 for
10 unprofessional conduct, as defined by section 3110, subdivision (q). As set forth in paragraph 20
11 above, respondent failed to maintain adequate and accurate records by being unable to locate
12 records for L.L. and a minor child of M.S.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **Unprofessional Conduct: Failing to Comply with Request for Records**
(Bus. & Prof. Code, § 3110, subd. (x))

15 35. The allegations of paragraphs 15-20 are realleged and incorporated by reference as if
16 fully set forth.

17 36. Respondent has subjected his license to disciplinary action under section 3110 for
18 unprofessional conduct, as defined by section 3110, subdivision (x). As set forth in paragraphs
19 15-20 above, respondent failed to provide complete copies of records to R.G and her mother,
20 S.R., and P.B., and failed to provide any records to L.L. and a minor child of S.M., after receiving
21 written requests and the patients' authorizations for those records.

22 **NINTH CAUSE FOR DISCIPLINE**

23 **Unprofessional Conduct: Failing to Allow Inspection of Records**
(Bus. & Prof. Code, § 3110; Health & Saf. Code, § 123110, subd. (a))

24 37. The allegations of paragraphs 15-20 are realleged and incorporated by reference as if
25 fully set forth.

26 38. Respondent has subjected his license to disciplinary action under section 3110 for
27 unprofessional conduct, as defined by Health and Safety Code section 123110, subdivision (a).

28 ///

1 As set forth in paragraphs 15-20 above, respondent failed to provide records for inspection after
2 receiving a written request for those records.

3 **TENTH CAUSE FOR DISCIPLINE**

4 **Unprofessional Conduct: Failing to Provide Copies of Records Subject to Inspection**
5 **(Bus. & Prof. Code, § 3110; Health & Saf. Code, § 123110, subd. (b))**

6 39. The allegations of paragraphs 15-20 are realleged and incorporated by reference as if
7 fully set forth.

8 40. Respondent has subjected his license to disciplinary action under section 3110 for
9 unprofessional conduct, as defined by Health and Safety Code section 123110, subdivision (b).
10 As set forth in paragraphs 15-20 above, Respondent failed to provide copies of records subject to
11 inspection after receiving a written request for those records.

12 **ELEVENTH CAUSE FOR DISCIPLINE**

13 **Unprofessional Conduct: Failing to Keep an Accurate Record of Findings**
14 **(Bus. & Prof. Code, § 3110, subd. (a); Cal. Code Regs., tit. 16, § 1510)**

15 41. The allegations of paragraph 20 are realleged and incorporated by reference as if fully
16 set forth.

17 42. Respondent has subjected his license to disciplinary action under section 3110 for
18 unprofessional conduct, as defined by section 3110, subdivision (a), based on inefficiency as
19 defined by California Code of Regulations, title, 16, section 1510. As set forth in paragraph 20
20 above, respondent failed to keep an accurate record of findings because he could not locate
21 records for L.L. and a minor child of M.S.

22 **PRAYER**

23 WHEREFORE, complainant requests that a hearing be held on the matters alleged in this
24 Accusation, and that following the hearing, the State Board of Optometry issue a decision:

25 1. Revoking or suspending Optometry License Number 11410 issued to David Cameron
26 Brosnan;

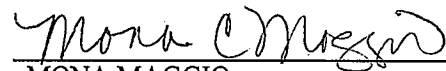
27 2. Ordering David Cameron Brosnan to pay the State Board of Optometry the
28 reasonable costs of the investigation and enforcement of this case pursuant to Business and
Professions Code section 125.3; and

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: August 14, 2012



MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

SF2012900857
90246655.doc